

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

VERITEXT/PA REPORTING COMPANY,	:	CIVIL ACTION
LLC, t/a RSA	:	
v.	:	
E-REPORTING STENOGRAPHIC	:	
AFFILIATES OF PENNSYLVANIA, INC.,	:	
t/a E-RSA, F. DAVID DAMIANI, LAURA	:	
GROSSO, CARMELLA MAZZA, RICHARD	:	
J. COLEMAN	:	NO. 03-6533

MEMORANDUM AND ORDER

JACOB P. HART	December 20 , 2004
UNITED STATES MAGISTRATE JUDGE	

In addressing a Motion to Compel Discovery Responses filed by the Defendants in this case, the undersigned requested further briefing by the Plaintiff, explaining why the nineteen categories of information sought by the Defendants were irrelevant, as the Plaintiff asserted in its response to the original motion. Having now reviewed the requests and the briefs, we will grant the Defendants' motion in part and deny it in part.

The Plaintiff has now agreed to turn over the following requested information: (1) Veritext/Pa's days sales outstanding since January 1, 2002; (2) Veritext/Pa's balance sheets since January 1, 2002; (3) All accounts receivable details and analyses since January 1, 2002; (4) Veritext/Pa's year-to-date and year-to-year comparison financial statements; and (5) the Veritext brochure referenced in Ms. Strain's deposition. (Bullet Points 1-3, 5, and 11 in the Motion to Compel). This information shall be produced within ten days of the entry of the attached Order.

In Bullet Points 4 and 18, the Defendants sought "Veritext/Pa's monthly operations meeting packages, drafted or distributed since January 1, 2002" and "Board of Managers meeting minutes, including the memoranda/analyses and summaries thereof." In response to the Request,

Veritext advised Defendants that there were no minutes of the management meetings. However, Veritext did produce the agendas from the operational meetings.

According to the Defendants, there was deposition testimony that the monthly operations meeting packages contained the days sales outstanding, accounts receivable, and balance sheets. Since the Plaintiff has already agreed to produce these documents, we find this request redundant. To the extent additional financial information, relevant to the damages claimed in this lawsuit, was distributed in the meetings, the Plaintiff shall turn it over within ten days of the date of the entry of the accompanying Order.

In Bullet Points 6 and 7, the Defendants seek information regarding the audit performed at the time Veritext acquired RSA and due diligence performed by Veritext at that time. According to the Defendants, this information is relevant because the lack of due diligence resulted in minimal personal relationships with the clients, making Veritext “vulnerable to ERSA’s establishment.” Defendants’ Reply, at 5 (quoting Dep. of CFO Nancy Josephs, at 54).

What the Defendants have done is taken two problems identified by Nancy Josephs, the CFO of Veritext, and linked them together. It is true that Ms. Josephs stated that she believed the due diligence conducted was lacking. (Josephs’ Dep., at 52). She also stated that the lack of personal contacts that Veritext had formed with RSA’s clients made it vulnerable. (Josephs’ Dep., at 54). However, considering the fact that Veritext acquired RSA six years prior to the actions that give rise to this lawsuit, we find the alleged omissions in due diligence to be irrelevant. As Ms. Josephs stated at her deposition, she had attempted to build and strengthen customer relationships after the acquisition, but it was never done. (Josephs’ Dep., at 55-56). Contrary to the Defendants’ argument, we believe the information sought is not relevant to the

issues in this case and amounts to a fishing expedition.

In Points 8 and 9, the Defendants seek information regarding Defendant Damiani's compensation in order to demonstrate one of the allegedly "poor business decisions made by plaintiff's management that resulted in business lost to ERSA." Specifically, the Defendants seek the analysis of Damiani jobs prepared by Michael Deckert and Mr. Damiani's pay stubs/calculations since January 1, 2002, or as early as is necessary to establish the date on which Damiani's pay was reduced. The Plaintiff responds that it has already produced information concerning Mr. Damiani's compensation on a yearly basis and contends that the paystubs are already in the possession of Mr. Damiani and would be extremely burdensome for the Plaintiff to obtain. Moreover, argues the Plaintiff, the amount of money Plaintiff paid to Mr. Damiani has no relevance to this case.

Although the court can see the relevance of the information sought, the Plaintiff has already produced information that would tend to prove (or disprove) the Defendants' point, that Mr. Damiani's pay was cut. Despite the fact that Defendants claim that Mr. Damiani does not possess his paystubs, he certainly should have some record of his income. We will not burden the Plaintiff with any further production concerning this issue.

Next, Defendants seek all National Court Reporting Journal Advertisements. Although Veritext asserts that no formal request for the advertisements was ever made, it has agreed to produce Veritext's advertisements from 2002 to the present. We agree with the Plaintiff that it need not produce any advertisements having to do with its parent or sister companies.

In their twelfth Bullet Point, the Defendants seek records regarding Dick Coleman's employment transition from Esquire to RSA, arguing that it is commonplace for court reporters

to switch between competing firms and arguing that the information is relevant to establish Ed Tuite's involvement in the transition. We reject the Defendants' arguments. First, although it may be commonplace for employees to jump from company to competing company, the allegations in this case are that the employees jumped from RSA to form a new competitor for the Plaintiff, taking the clients with them. Next, as will be discussed, Mr. Tuite's relevance to this lawsuit has not been established.

The Defendants next seek records regarding legal services provided by Ed Tuite to any Veritext organization and any documents related to payments made to Ed Tuite for any and all services. First, we note that the only relevant entity here is Veritext/Pa. As we ruled in the earlier Memorandum and Order, "to the extent the Defendants seek information directly relating to the parent or sister companies, we agree with the Plaintiff that the information is irrelevant to the damages suffered by Veritext of Pennsylvania." (Memorandum and Order, 11/23/04, at 5). Thus, any legal services provided to the other Veritext entities are irrelevant to the issues in this case.

The Defendants rely upon statements of Plaintiff's counsel at Mr. Tuite's deposition to establish the relevance of the documents they seek. Review of the excerpt of the deposition shows that Plaintiff's counsel stated that the documents used at Mr. Tuite's deposition were relevant to his client's unfair competition claim. (Tuite Dep., at 78). The problem is that the Defendants are attempting to use this statement to establish the relevance of all Tuite documents. The Defendants are painting with too broad a brush. The Plaintiff claims to have already produced the documents used at the Tuite deposition. Therefore, the documents which the Defendants claim Plaintiff's counsel deemed relevant have already been produced.

Mr. Tuite is not a defendant in this case, but is the subject of a case yet to be filed by the Plaintiff. We suspect that the Defendants are attempting to jump start the discovery process for this “yet to be filed case,” in the event they are drawn into it. The court will not aid this endeavor.

The Defendants’ next request is for any and all “proposals” submitted on behalf of Veritext/PA since January 1, 2002. The Plaintiff complains that the term “proposals” is undefined and ambiguous. In addition, depending on its scope, the request could be burdensome. In reply, the Defendants reference Request for Production number 5, which asked for marketing materials, brochures, and documents of any nature used to promote plaintiff or its services used by plaintiff in the last five years. In response to that Request, the Plaintiff stated, “[t]o the extent such documents have not already been produced, they will be produced.” Responses to Third Set of Requests, attached to Plaintiff’s Response to the Motion to Compel. In the court’s opinion, such production will satisfy the request.

Defendants next request financial records from Veritext LLC, Veritext/NJ, Veritext/FL, and Veritext/CA. Although the court previously ruled that we would not permit the Defendants to delve into the records of the Plaintiff’s parent and sister companies, the Defendants request reconsideration in light of the arguments presented in their brief.

First, they contend that the losses sustained as a result of the formation of ERSA were “the result of fair and ordinary competition of the American economic system.” Defendants’ Reply, at 10. The Defendants contend that the financial records from Plaintiff’s parent and sister companies would prove their point. We reject this notion. We will not permit Defendants to conduct a fishing expedition into the financial records of companies whose financial strength or

weakness is not at issue in this case.

The Defendants also assert that the records from Veritext/NJ are necessary for comparison because one of the court reporters from Veritext/NJ brought her business to Veritext/PA to “slow the exodus of clients going to ERSA.” Based on this statement and Michael Deckert’s deposition testimony that Ms. Strain was incorporated into the Philadelphia office, we believe that Ms. Strain’s history of business could be relevant to the evidence of damages, i.e. any calculation of damages must include consideration of the amount of business brought to Veritext/PA by Ms. Strain. Therefore, we will permit discovery of financial documents of Veritext/NJ, only to the extent Veritext/NJ produce documentation regarding the business generated by Ms. Strain for the year prior to her “incorporation” into Veritext/PA.

The Defendants next seek any records regarding the departure of Thomas Oakes, as referenced in Ms. Strain’s deposition. In support of its request, the Defendants explain that Mr. Oakes left Veritext to form his own court reporting agency, just as Mr. Damiani did. The Plaintiff argues that Mr. Oakes’ departure occurred several years ago and has absolutely no relevance to the issues in this case. We agree. There has been no showing that Mr. Oakes’ departure resulted in any unfair competition.

Finally, the Defendants seek records of Veritext LLC, the parent, evidencing lost business as a result of departing court reporters and employees. To the extent Veritext LLC has, in its possession, documents that were generated by Veritext/PA regarding the departure of the Defendants or evidencing the financial strength/weakness of Veritext/PA during the relevant period (2 years prior to the departure of the Defendants to the present), they shall be produced. We will not permit the Plaintiff to shield relevant information from discovery by claiming that it

is in the hands of its parent. However, as previously stated, we will not permit the Defendants to conduct a fishing expedition into the records of the parent or sister corporations in this case.

An appropriate Order follows.

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J. COLEMAN	:	NO. 03-6533

ORDER

AND NOW, this 20th day of December, 2004, upon consideration of the Defendants' Motion to Compel, the response, and the supplemental briefing, and for the reasons stated in the accompanying Memorandum, IT IS HEREBY ORDERED that the Motion is GRANTED IN PART and DENIED IN PART. The Plaintiff shall produce the following within ten days of the entry of this Order: (1) Veritext/Pa's days sales outstanding since January 1, 2002; (2) Veritext/Pa's balance sheets since January 1, 2002; (3) all accounts receivable details and analyses since January 1, 2002; (4) Veritext/Pa's year-to-date and year-to-year comparison financial statements; (5) any additional relevant financial information that was distributed at the monthly operations meetings; (6) the Veritext brochure referenced in Ms. Strain's deposition; (7) National Court Reporting Journal Advertisements; (8) marketing materials, brochures, and documents of any nature used to promote plaintiff or its services used by plaintiff in the last five years; (9) records evidencing the value of the business generated by Ms. Strain in the year prior to her incorporation into Veritext/PA; and (10) any documents

generated by Veritext/PA in the possession of Veritext LLC regarding the departure of the Defendants or evidencing the financial strength/weakness of Veritext/PA during the relevant period. In all other respects, the Defendants' Motion is DENIED.

BY THE COURT:

JACOB P. HART
UNITED STATES MAGISTRATE JUDGE